**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

WALKER DAVIS ENTERTAINMENT, LTD. and PENDULUM RECORDS, LLC, **Plaintiffs,** **v.** **REGINA BELLE,** **Defendant.**	**CIVIL ACTION** **FILE NO. 3 09-CV-98 JTC**

DEFENDANT'S AFFIRMATIVE DEFENSES, ANSWER, AND COUNTERCLAIMS

COMES NOW, REGINA BELLE, Defendant in the above-styled action, by and through the undersigned counsel of record, and files her affirmative defenses, answer, and counterclaims to Plaintiffs' Complaint showing the court as follows:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

This Court lacks subject matter jurisdiction over Defendant as the amount in controversy does not meet the jurisdictional requirements of 28 U.S.C. § 1332(a).

THIRD DEFENSE

Plaintiff, Pendulum Records, LLC, lacks standing to assert this Complaint against Defendant.

FOURTH DEFENSE

Plaintiffs have not mitigated their damages, if any.

FIFTH DEFENSE

This Court lacks personal jurisdiction over Defendant.

SIXTH DEFENSE

The damages Plaintiffs have alleged to have suffered are too speculative and incapable of proof.

SEVENTH DEFENSE

Defendant acted in good faith in all transactions, acts, or conduct pertaining to Plaintiffs' claims.

EIGHTH DEFENSE

No act or omission on the part of Defendant caused or contributed to any injuries or damages Plaintiffs allege to have sustained.

NINTH DEFENSE

Defendant has not breached any legal duty owing to the Plaintiffs.

TENTH DEFENSE

Any statements Plaintiffs contend Defendant made are protected by the doctrines of truth, opinion, competition, and/or privilege.

ELEVENTH DEFENSE

Plaintiffs have unclean hands.

TWELFTH DEFENSE

Plaintiffs' claims are barred by waiver and estoppel.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred by laches, delay, and acquiescence.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

FIFTEENTH DEFENSE

Plaintiff Walker Davis Entertainment waived the option to exclusively record and release Defendant's next Album by failing to timely pay Defendant the $30,000.00 advancement as required by the Amended Memorandum of Understanding (MOU II).

SIXTEENTH DEFENSE

Plaintiffs' Complaint is barred, in whole or in part, by the doctrine of acquiescence.

SEVENTEENTH DEFENSE

The Inducement Letter as alleged and sued upon by Plaintiffs was never made, signed or executed by Defendant or any person by them so authorized to do so and the same is not Defendant's act or deed.

EIGHTEENTH DEFENSE

Alternatively, in the event Defendant signed the Inducement Letter, Defendant did so without reading the Inducement Letter in reliance of a confidential relationship Defendant had with Plaintiffs; thus Defendant should not be bound by the Inducement Letter.

NINETEENTH DEFENSE

Upon information and belief, Plaintiffs fraudulently, either by fraud in fact or fraud in the inducement, procured the Inducement Letter allegedly signed by Defendant. Accordingly, the Inducement Letter is either void or voidable by Defendant because of Plaintiffs fraudulent acts. Defendant's fraud defense is supported by the following known facts: 1) Plaintiffs presented to Defendant's counsel an Inducement Letter, alleging that it was signed by Defendant; 2) Defendant never saw the Inducement Letter nor knew of its existence prior to Plaintiffs presentation of the Inducement Letter to Defendant's counsel; 3) Plaintiffs admit in their Complaint that Pendulum Records drafted the Inducement

Letter; 4) The Inducement Letter allegedly signed by Defendant that was included in Plaintiffs Complaint is noticeably different than the Inducement Letter sent to Defendant's counsel upon the initiation of this dispute; 5) Defendant had a confidential relationship with Plaintiff WDE whereas WDE was in a position to fraudulently obtain Defendant's signature; 6) Both Plaintiffs had much to gain by making Defendant record and release a second album with WDE.

TWENTIETH DEFENSE

WDE breached the Memorandum of Understanding ("MOU") by assigning the MOU first to Canvas and then to Pendulum without providing written notice by way of Certified Mail, by failing to satisfy its payment obligations according to the MOU, and by failing to provide Defendant with timely account reports detailing sales figures and recoupment. *See* Ex A at §§ 8, 9, and 13. These substantial breaches by WDE, excused Defendant from any obligations that she may have had to Plaintiffs, including, but not limited to, recording and releasing her next album with WDE.

TWENTY-FIRST DEFENSE

There was no meeting of the minds between the parties; thus the Inducement Letter is void.

Subject to the above defenses, Defendant responds to each numbered Paragraph of the Plaintiffs' Complaint as follows:

PARTIES

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 1 of Plaintiffs' Complaint.

2.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 2 of Plaintiffs' Complaint

3.

Defendant admits the averments of Paragraph 3 of Plaintiffs' Complaint.

JURISDICTION AND VENUE

4.

The allegation contained in Paragraph 4 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies the averments of Paragraph 4 of Plaintiffs' Complaint.

5.

The allegation contained in Paragraph 5 of Plaintiffs’ Complaint constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies the averments of Paragraph 5 of Plaintiffs’ Complaint.

6.

The allegation contained in Paragraph 6 of Plaintiffs’ Complaint constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, Defendant denies the averments of Paragraph 6 of Plaintiffs’ Complaint.

OPERATIVE FACTS

7.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 7 of Plaintiffs' Complaint.

8.

Defendant denies the averments of Paragraph 8 of Plaintiffs' Complaint.

9.

Defendant admits the averments of Paragraph 9 of Plaintiffs' Complaint.

10.

Defendant admits the averments of Paragraph 10 of Plaintiffs' Complaint.

11.

Defendant admits the averments of Paragraph 11 of Plaintiffs' Complaint.

12.

Defendant admits the averments of Paragraph 12 of Plaintiffs' Complaint.

13.

Defendant admits the averments of Paragraph 13 of Plaintiffs' Complaint.

14.

Defendant denies the averments of Paragraph 14 of Plaintiffs' Complaint.

15.

Defendant denies the averments of Paragraph 15 of Plaintiffs' Complaint.

16.

Exhibit 3 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16 of Plaintiffs' Complaint.

17.

Exhibit 3 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 17 of Plaintiffs' Complaint.

18.

Exhibit 3 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 18 of Plaintiffs' Complaint.

19.

Exhibit 3 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 19 of Plaintiffs' Complaint.

20.

Exhibit 3 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 20 of Plaintiffs' Complaint.

21.

Exhibit 3 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 21 of Plaintiffs' Complaint.

22.

Defendant denies the averments of Paragraph 22 of Plaintiffs' Complaint.

23.

Defendant denies the averments of Paragraph 23 of Plaintiffs' Complaint.

24.

Defendant denies the averments of Paragraph 24 of Plaintiffs' Complaint.

25.

Defendant admits the averments of Paragraph 25 of Plaintiffs' Complaint.

26.

Defendant denies the averments of Paragraph 26 of Plaintiffs' Complaint.

27.

Defendant denies the averments of Paragraph 27 of Plaintiffs' Complaint.

28.

Exhibit 4 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 28 of Plaintiffs’ Complaint.

29.

Defendant denies the averments of Paragraph 29 of Plaintiffs' Complaint.

30.

Defendant denies the averments of Paragraph 30 of Plaintiffs' Complaint.

31.

Defendant denies the averments of Paragraph 31 of Plaintiffs' Complaint.

32.

Defendant denies the averments of Paragraph 32 of Plaintiffs' Complaint.

33.

Exhibit 5 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 33 of Plaintiffs' Complaint.

34.

Exhibit 6 to Plaintiffs’ Complaint speaks for itself. Defendant admits the averments of Paragraph 34 of Plaintiffs' Complaint.

35.

Exhibit 6 to Plaintiffs' Complaint speaks for itself. Defendant admits the averments of Paragraph 35 of Plaintiffs' Complaint.

36.

Exhibit 7 to Plaintiffs' Complaint speaks for itself. Defendant denies the averments of Paragraph 36 of Plaintiffs' Complaint.

37.

[There was no Paragraph 37 in Plaintiffs' Complaint.]

38.

Exhibit 8 to Plaintiffs' Complaint speaks for itself. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 38 of Plaintiffs' Complaint.

39.

Defendant admits returning the check referenced in Paragraph 39 of Plaintiffs' Complaint, but denies the remaining averment.

40.

Exhibit 9 to Plaintiffs' Complaint speaks for itself. Defendant denies the averments of Paragraph 40 of Plaintiffs' Complaint.

41.

Exhibit 10 to Plaintiffs’ Complaint speaks for itself. Defendant admits the averments of Paragraph 41 of Plaintiffs' Complaint.

42.

Exhibit 11 to Plaintiffs’ Complaint speaks for itself. Defendant admits the averments of Paragraph 42 of Plaintiffs' Complaint.

43.

Exhibit 11 to Plaintiffs’ Complaint speaks for itself. Defendant admits the averments of Paragraph 43 of Plaintiffs' Complaint.

44.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment regarding who drafted the Inducement Letter that is the subject of this litigation, but Defendant denies the remaining averments of Paragraph 44 of Plaintiffs' Complaint.

45.

Exhibit 12 to Plaintiffs’ Complaint speaks for itself. Defendant denies the averments of Paragraph 45 of Plaintiffs' Complaint.

COUNT I

Declaratory Judgment Pursuant to 28 U.S.C. § 2201

46.

With regard to the allegations set forth in Paragraph 46 of Plaintiffs' Complaint, Defendant re-alleges and incorporates by reference its responses to Paragraphs 1 through 45 of Plaintiffs' Complaint as if fully set forth herein.

47.

Defendant admits the averments of Paragraph 47 of Plaintiffs' Complaint.

48.

Defendant admits the averments of Paragraph 48 of Plaintiffs' Complaint.

49.

Defendant admits the averments of Paragraph 49 of Plaintiffs' Complaint.

50.

Defendant admits returning the check referenced in Paragraph 50 of Plaintiffs' Complaint, but denies the remaining averment.

51.

Defendant denies the averments of Paragraph 51 of Plaintiffs' Complaint.

52.

Defendant admits the averments of Paragraph 52 of Plaintiffs' Complaint.

53.

Defendant denies the averments of Paragraph 53 of Plaintiffs' Complaint.

54.

Defendant denies the averments of Paragraph 54 of Plaintiffs' Complaint.

55.

Defendant denies the averments of Paragraph 55 of Plaintiffs' Complaint.

56.

Defendant denies the averments of Paragraph 56 of Plaintiffs' Complaint.

57.

Defendant denies the averments of Paragraph 57, including all subparts contain therein, of Plaintiffs' Complaint.

COUNT II

Breach of Contract

58.

With regard to the allegations set forth in Paragraph 58 of Plaintiffs' Complaint, Defendant re-alleges and incorporates by reference its responses to Paragraphs 1 through 57 of Plaintiffs' Complaint as if fully set forth herein.

59.

Exhibit 2 to Plaintiffs' Complaint speaks for itself. Defendant denies the averments of Paragraph 59 of Plaintiffs' Complaint.

60.

Defendant denies the averments of Paragraph 60 of Plaintiffs' Complaint.

61.

Defendant denies the averments of Paragraph 61 of Plaintiffs' Complaint.

62.

Defendant denies the averments of Paragraph 62 of Plaintiffs' Complaint.

63.

Defendant admits the averments of Paragraph 63 of Plaintiffs' Complaint.

64.

Defendant denies the averments of Paragraph 64 of Plaintiffs' Complaint.

COUNT III

Cost of Litigation Pursuant to O.C.G.A. § 13-6-11

65.

With regard to the allegations set forth in Paragraph 65 of Plaintiffs' Complaint, Defendant re-alleges and incorporates by reference its responses to Paragraphs 1 through 64 of Plaintiffs' Complaint as if fully set forth herein.

66.

Defendant admits only that she denies the authenticity and validity of the Inducement Letter, but denies all other averments of Paragraph 66 of Plaintiffs Complaint.

67.

Defendant denies the averments of Paragraph 67 of Plaintiffs' Complaint.

68.

Defendant denies the averments of Paragraph 68 of Plaintiffs' Complaint.

69.

Defendant denies the averments of Paragraph 69 of Plaintiffs' Complaint.

TWENTY-SECOND DEFENSE

Any averment contained in the Plaintiffs' Complaint not specifically responded to above is hereby denied.

WHEREFORE, having fully responded to Plaintiffs' Complaint, Defendant prays that:

(a) each of her defenses be sustained, all items set forth in Plaintiffs' Prayer For Relief be denied, and judgment be entered in Defendant's favor and that Plaintiffs' Complaint be dismissed, in its entirety, with prejudice;

(b) Defendant be discharged from this action without cost or liability to Plaintiffs;

c) Defendant be awarded her cost and expenses of litigation, including her reasonable attorney fees; and

(d) this Court grant Defendant such other and further equitable and other relief as the Court deems just and proper under the circumstances.

COUNTERCLAIM

Comes now Defendant Regina Belle and makes this her counterclaims against Plaintiffs Walker Davis Entertainment ("WDE") and Pendulum Records ("Pendulum") as follows:

1.

Plaintiffs are subject to the jurisdiction and venue of this Court by virtue of the claim that they filed against Defendant.

2.

Defendant entered into an agreement with Canvas, predecessor to WDE, to produce and market musical recordings by Defendant. A true and accurate copy of the Memorandum of Understanding ("MOU") is attached hereto as Exhibit A and is incorporated by reference as if fully set forth herein.

3.

Defendant entered into an agreement with Canvas to amend the MOU. A true and accurate copy of the Amendment to Memorandum of Understanding ("MOU II") is attached hereto as Exhibit B and is incorporated by reference as if fully set forth herein.

4.

Defendant performed all obligations as set forth in the MOU and MOU II.

COUNT I

Breach of Contract

5.

Defendant hereby reincorporates and realleges the allegations contained in Paragraphs 1 through 4 of her Counterclaim as if the same had been set forth herein.

6.

Canvas assigned its rights under the MOU and MOU II to WDE, making WDE fully responsible for timely and full performance of all contractual obligations owed Defendant. *See* Ex. B at § 2.

7.

WDE contractually obligated itself to provide Defendant with written notice by way of Certified Mail regarding any assignment arrangements by Company to any unaffiliated entity or individual. *See* Ex. A at § 13.

8.

WDE breached the MOU by assigning the MOU first to Canvas and then to Pendulum without providing written notice by way of Certified Mail in violation of Exhibit A, Section 13.

9.

Defendant suffered substantial damages, including the cost of defending this lawsuit, as a result of WDE's breach of assigning the MOU to Canvas and Pendulum without written notice by way of Certified Mail.

COUNT II

Breach of Contract

10.

Defendant hereby reincorporates and realleges the allegations contained in Paragraphs 1 through 9 of its Counterclaim as if the same had been set forth herein.

11.

WDE contractually obligated itself to pay Defendant Regina Belle 25% of all net revenue actually received by it as a result of the recording project. *See* Ex. A at § 8.

12.

WDE breached the MOU by failing to satisfy its payment obligations provided for in Exhibit A, Section 8.

13.

Accordingly, WDE is indebted to Defendant Regina Belle for at least $110,000.00, plus interest.

COUNT III

Breach of Contract

14.

Defendant hereby reincorporates and realleges the allegations contained in Paragraphs 1 through 13 of its Counterclaim as if the same had been set forth herein.

15.

WDE contractually obligated itself to timely accounting (including payment of all sums due and provision of full accounting statements) on a semi-annual calendar basis, on or about February 15 and August 15 of each year. *See* Ex. A at § 9.

16.

WDE breached the MOU by repeatedly failing to satisfy its obligations provided for in Exhibit A, Section 9.

17.

Defendant has suffered substantial damages as a result of Plaintiff WDE's breach of failing to provide timely accounting.

COUNT IV

Breach of Contract

18.

Defendant hereby reincorporates and realleges the allegations contained in Paragraphs 1 through 17 of its Counterclaim as if the same had been set forth herein.

19.

WDE contractually obligated itself to provide Defendant with accounting reports detailing sales figures and recoupment status on or about May 15 and November 15 of each year. *See* Ex. A at § 9.

20.

WDE breached the MOU by repeatedly failing to satisfy its obligations provided for in Exhibit A, Section 9.

21.

Defendant has suffered substantial damages as a result of Plaintiff WDE's breach of failing to provide detailed accounting reports.

COUNT V

Fraud

22.

Defendant hereby reincorporates and realleges the allegations contained in Paragraphs 1 through 21 of its Counterclaim as if the same had been set forth herein.

23.

Plaintiffs admit in their Complaint that Pendulum Records drafted the Inducement Letter which is the subject of this litigation.

24.

Defendant WDE had a confidential relationship with Defendant whereas WDE had access to Defendant's signature and/or could obtain Defendant's signature from Defendant without Defendant reading a document based on reliance of her long-time relationship with WDE.

25.

Both WDE and Pendulum would benefit substantially if Defendant recorded and released her next album with WDE.

26.

Both WDE and Pendulum knew that Defendant did not intend to release and record her next album with WDE because of WDE's failure to provide Defendant with the advance payment as required by MOU II.

27.

On June 10, 2009, Pendulum Records sent Defendant's counsel an Inducement Letter which Plaintiffs alleged was signed and entered into by Defendant. A true and accurate copy of the Inducement Letter Plaintiff Pendulum Records sent Defendant's counsel is attached hereto as Exhibit C.

28.

Prior to Defendant's counsel receiving the Inducement Letter from Plaintiffs on June 10, 2009, Defendant never saw the Inducement Letter nor was aware of its existence.

29.

On September 3, 2009, Plaintiffs filed their Complaint against Defendant alleging that Exhibit 3 of their Complaint included an Inducement Letter that was signed by Defendant Regina Belle. A true and accurate copy of the Inducement Letter filed with Plaintiffs Complaint is attached hereto as Exhibit D.

30.

The Inducement Letter filed with Plaintiffs Complaint and the Inducement Letter provided to Defendant's counsel on June 10, 2009 are noticeably different. Nonetheless, Plaintiffs claim that both Inducement Letters are true and accurate.

31.

Based on the above stated facts and upon information and belief, Plaintiffs WDE and Pendulum fraudulently procured, either by fraud in fact or fraud in the inducement, the alleged Inducement Letter which is the subject of this litigation.

32.

As a result of Plaintiffs fraudulent acts, Defendant has suffered substantial damages, including the cost of defending this litigation.

WHEREFORE, Defendant Regina Belle prays as follows:

(a) judgment be entered in Defendant's favor plus interest accruing at the legal rate;

(b) Plaintiffs be ordered to pay all Defendant's cost associated with this litigation, including all legal and professional fees;

(c) Plaintiffs be order to pay punitive damages in an amount to be determined by the trier of fact; and

(d) this Court grant Defendant such other and further equitable relief as the Court deems just and proper under the circumstances.

Respectfully submitted this 12th day of October, 2009.

HAWKINS & PARNELL, LLP

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AFFIRMATIVE DEFENSES, ANSWER, AND COUNTERCLAIMS OF DEFENDANTS** was filed with the Clerk of the Court and a copy has also been sent to the following attorney of record by electronic filing via CM/ECF:

Jeffrey D. Horst, Esq.
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Respectfully submitted this 12th day of October, 2009.

HAWKINS & PARNELL, LLP

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